

Minutes of Public Meeting
Environmental Quality Commission
Room 131 Capitol Annex, Frankfort, Ky.
August 2, 2001--1:00 to 4:00 p.m.

EQC Commissioners

Aloma Dew, Chair
Betsy Bennett, Vice-Chair
Patty Wallace
Serena Williams
Bob Riddle

Staff

Leslie Cole, Director
Erik Siegel, Assistant Director
Lola Lyle, Research Analyst
Frances Kirchhoff, Adm. Asst.

Speakers/Representatives Present

Gene Blair, Supervisor Environmental Response Team, Ky. Division of Water
Parker Moore, Ky. Division of Air
Gary Epperson, Director, Winchester/Clark County Emergency Management Services
Art Smith, U.S. Environmental Protection Agency
Bruce Scott, KPDES Branch, Ky. Division of Water

Approval of Minutes

Action to approve the minutes of the May 21 meeting was postponed until the next meeting.

Opening Remarks

Environmental Quality Commission (EQC) Chair, Aloma Dew, opened the meeting at 1:00 pm. Approximately 60 people were in attendance. The purpose of the meeting was to:

- Review environmental spills,
- Discuss roles and responsibilities in spill response,
- Look for opportunities to prevent and better respond to spills,
- Receive a status report on the Martin County Coal Slurry spill, and
- Take action on the Ky. Division of Water's proposed concentrated animal feeding operation (CAFO) regulation.

The Role of State Government – Gene Blair, Ky. Environmental Response Team

The EQC Chair introduced the first speaker, Mr. Gene Blair, Supervisor with the Kentucky Environmental Response Team (ERT). Mr. Blair gave a power point presentation of the following spills and cleanups that occurred during the past few years.

- WAXLER TOWING MARATHON, ASHLAND BARGE COLLISION, August 8, 1999, Henderson County.
 - 110,000 gallons-gasoline and cumene
 - fire/explosion risk
 - stream contamination
 - effected downstream water intakes
 - 12,000 public water customers
- KY UTILITIES, E.W. BROWN STATION, October 2, 1999, Mercer County
 - 30,000 gallons--diesel fuel

- tributary of Kentucky River
- potential effect on 116,000 water consumers downstream
- CATLETTSBURG REFINERY, November 11, 1999, Boyd County
 - 1.26 million gallon storage tank
 - release of 300,000 gallons
 - intermediate refinery product released
- MARATHON ASHLAND PIPELINE, January 27, 2000, Clark County
 - 24-inch transmission line from Illinois to Catlettsburg refinery
 - 5th green of Southwind Golf Course and farmland of 9 property owners
 - 600,000 gallons of crude oil
- NORFOLK-SOUTHERN RAILCAR FIRE, April 25, 2000, Boyle County
 - railcar containing 150,000 lbs. of sodium hydrosulfide
 - 32 bins--46,000 lbs. each
 - water reactive compound
 - burning produces sulfur dioxide
- BOULEVARD DISTILLERY, May 10, 2000, Anderson County
 - warehouse fire
 - 400,000 gallons of wild turkey bourbon
 - runoff of bourbon and firefighting waste water entered the Kentucky River causing a major fishkill
- MARTIN CO. COAL CORP. SLURRY POND, October 11, 2000, Martin County
 - estimated 210 million gallons released from slurry impoundment
 - impacted 2 tributaries of Tug Fork and the Big Sandy River

[A copy of Mr. Blair's presentation is attached and made a part of these minutes.](#)

Mr. Blair said the role of the ERT is to contain and cleanup a spill or release, manage the response with onsite presence of emergency personnel, and address any environmental damage and threats to human health. The ERT responds to calls and may dispatch staff from the Division of Water, Division of Air, and the Division of Waste Management. Staffing consists of 21 ERT responders statewide with 7 individuals on-call at any one time.

Questions and answers followed Mr. Blair's presentation.

Question. Who pays for all of this (the emergency responders, the damage clean up, etc.)?

Response. The cost for salaries and travel expenses comes from ERT's normal operating budget, which is provided through the Hazardous Waste Management Fund. The responsible party pays a big part of the contractor bills. ERT sees that the responsible parties are on-site to pay for the contractor's work.

Question. Why is the state's ERT in the Division of Water?

Response. It was placed in the Division of Water for administrative purposes (budget and funding). The ERT functions within the Department for Environmental Protection with all the divisions involved—Water, Air, and Waste—as members of the team.

Question. How does the public go about finding ERT in an emergency situation?

Response. The 1-800 spill notification number is readily available to the parties involved in response activities. Citizens' calls will be forwarded to that 1-800 number.

Question. Is the ERT emergency response number listed in a local phonebook for citizens' use?

Response. No.

Question. Do you think that maybe it should be?

Response. It would be an excellent idea. Maybe the state could do a better job of making that 1-800 number readily available to its citizens. Most state agencies are aware of that number and they will refer citizens' calls to that number.

Question. A call came to the EQC from a concerned citizen about the state's response to spills stating that local HazMat officials are not contacting state officials regarding spills. The example was the 1999 compost fire in Louisville where local fire fighters caused a fish kill in Floyd's Fork. Are you familiar with that incident?

Response. Yes, I am familiar with it. ERT was involved in the entire incident. The fish kill was probably an indirect result of too much water on the fire that flowed into Floyd's Fork and did cause a fish kill.

Question. EQC had a call regarding local training and the ability to properly respond to spills and environmental emergencies. Can you comment?

Response. That is a real common problem in the state. We have a lot of OSHA requirements and restrictions, and local fire departments and local responders have a difficult time meeting these requirements. The training cost, equipment cost, and ongoing maintenance and upkeep are a big expense. We have had groups across the state that have tried to create a local HazMat unit and most have had to disband because they cannot afford it.

Question. What are some of the needs that you see for the ERT?

Response. Funding is the biggest need, but where the funding will come from, I don't know. Local organizations just can't afford it.

Question. Is this something to be explored during the next legislative session?

Response. I'm not aware of that.

Question. How effective has the state been in collecting response costs? How does the state determine which spills to try and recuperate costs from as opposed to just respond to?

Response. Normally ERT does not try to recover costs for every response. If it is something that turns into being above the normal response of activities, we will look to cost recovery.

Question. Do you think the state should be considering cost recovery on all responses?

Response. Yes, I think it would be a way to improve the ERT.

Question. A call came in to EQC asking about staffing. The caller tried to report a spill near the July 4th holiday and could not locate a state response person. Is staffing a problem on weekends and holidays? Is ERT adequate at the local level?

Response. Normal staffing is 21 ERT responders statewide. They are on a three-week rotation so at any one time we have seven individuals on-call and two others that take after-hours calls and dispatch to those individuals. There is someone on-call all the time. Each after-hours call received is weighted and becomes a judgement call concerning the nature of the emergency.

Question. What is the response time of an emergency call?

Response. The policy response time for ERT is 30 minutes. There are areas of Kentucky where it may take an hour.

Question. During that hour, are you already in touch with the person that called, or the persons involved as to what to do or what not to do until ERT arrives?

Response. Routinely, ERT would be in touch with the responsible party, local emergency responders, law enforcement folks, and local emergency management folks. Yes, we are in communication at all times.

Question. Is ERT in charge once you get to the scene?

Response. The Kentucky Emergency Operation Plan, which is the state's emergency plan, specifies there be a unified instant command system in place. According to this plan, the Kentucky Division of Emergency Management's senior representative on-site is to be the instant commander, but the responsibility can be delegated to a particular agency.

Question. In responding to spills, how much information is available and is it adequate?

Response. When we routinely respond it is with very little information. Sometimes all the information given is just that there is an oil spill in a creek. ERT officials are trained to respond with caution. Very seldom are all the facts known when ERT is first alerted. We have the proper equipment and proper training to approach each situation safely.

Question. Are companies doing a better job reporting spills? What needs to be done to improve spill response and prevention?

Response. Yes, there is an increase in reports from responsible parties in reporting spills. The increase is due to enforcement actions and information and education. As for prevention, things happen. Companies could always do things to improve spill prevention. They have the spill prevention control countermeasures program in the federal government and inspections could be stepped up on that, but the federal agency that regulates it has limited resources also.

Question. So if more monies were recovered from responsible parties, then more resources could be available for more inspectors and this effort could also serve as a deterrent to promote spill prevention.

Response. Yes, I think so.

Question. There was a fire at a paint factory in Lexington. The fire department used a lot of water to put out the fire, and the water ran into the Elkhorn Creek causing problems. Are fire departments being trained not to over-do watering down fires?

Response. Yes, training is being done to help fire fighters realize that "more water is not better" and in some cases such as small spills, it is sometimes better to let a fire burn.

Risk Management Program – Parker Moore, Division for Air Quality

Next, the Chair introduced Mr. Parker Moore with the Kentucky Division of Air Quality. Mr. Moore explained the Risk Management program. Section 112(r) of the amended Clean Air Act mandated a focus on the prevention of chemical accidents. The purpose of this section is to prevent serious chemical accidents that have the potential to affect public health and the environment.

Mr. Moore stated that the law requires that risk management programs incorporate 3 elements.

- a hazard assessment,
- a prevention program,
- an emergency response program.

These programs are to be summarized in a risk management plan that is made available to state and local government.

Any source with more than a threshold quantity of listed regulatory substance must comply with the regulation. If any hazardous chemicals are on-site, the company will do an air dispersion modeling to determine if any hazardous chemicals could spread off the company's site in the event of an emergency spill. If there is no risk, then the U.S. Environmental Protection Agency's (EPA) requirements have been met. If there is a possibility that the surrounding community could be affected by an accidental release, then a full risk management plan is necessary as well as an emergency response plan. The company then gives the plan to the U.S. EPA. The U.S. EPA posts the plan on its website. Any company's plan can be easily accessed by going to U.S. EPA's Web site at the Branch of the Chemical Emergency Preparedness and Prevention Office (CEPPO) into the Risk Management Plan (RMP) information link. This plan will state what measures a company will take to prevent a spill and what the company will do to protect the community if an accidental spill occurs. Because of security, the U.S. EPA's Web site does not post the off-site consequence analysis data--the information of how bad the consequences of a spill could be for a community. Reading Rooms have been set up around the country. A request can be made to see the consequence analysis information for any particular plant.

Questions and answers followed Mr. Moore's presentation.

Question. How many companies in Kentucky now have these plans?

Response. Approximately 800 companies now have plans. (*Note – this was later corrected to 232 companies*)

Question. Are the plans given to local officials or are they kept on-site at the plant?

Response. We try to keep in communication and coordination with Disaster and Emergency Services, Emergency Management Service and make them aware of the posting of the plans.

The Local Role – Gary Epperson, Winchester/Clark County Emergency Management

The Chair introduced Mr. Gary Epperson, with the Winchester/Clark County Emergency Management. Mr. Epperson discussed the local role and what some of the issues and needs are at the county and city level.

Mr. Epperson said the role and responsibilities of local government is to train responders and have emergency personnel at the scene as quickly as possible. These are the first true responders. In Clark County, city and county fire departments are trained at least on the operations level, and a number of technicians are trained as responders. Mr. Epperson stated it is important for local communities to have a hazardous material response ordinance. This ordinance specifies who is responsible for doing what and gives them power and authority. In Clark County, the fire chief or the highest-ranking officer on the city or county fire department is the instant commander on the scene. Mr. Epperson then gave a slide presentation of the January 27, 2000 Marathon Ashland Petroleum pipeline rupture.

Question and answers followed Mr. Epperson's presentation.

Question. Does the local level get reimbursed for cleanup expenses?

Response. Yes, the ordinance allows Clark County to bill the responsible parties.

Question. Do most counties have hazardous spill ordinances?

Response. About one-half of the counties in Kentucky have ordinances.

Question. Was the discovery of the broken Marathon Ashland pipeline made by the company asking, 'where did all the oil go' or by a person looking out and asking, 'where did all the oil come from'?

Response. The company noted a drop in pressure earlier in the day. The call actually came from a citizen to the fire department saying there was oil everywhere on her brother's property.

Question. Do you have any idea of the total cost of the Marathon spill?

Response. The cost was several million dollars.

Question. Was there ever a calculation of the total amount of oil spilled?

Response. There was approximately 600,000 gallons.

Question. Did the County get reimbursed for its response costs?

Response. Yes, that is a part of our ordinance. The costs for the fire department, road department, and my agency's costs were approximately \$60,000.00.

The Federal Role – Art Smith, U.S. Environmental Protection Agency

The Chair next introduced Mr. Art Smith, Federal on-scene Coordinator with the U.S. Environmental Protection Agency (EPA). Mr. Smith reviewed the federal government's role in spill response and the current status of the Martin County Coal Slurry spill and cleanup plan.

Mr. Smith stated the U.S. EPA now has an on-scene coordinator office in Louisville. The U.S. EPA moved responders from Atlanta to various points in the region to put on-site coordinators closer to responding to incidents and getting to the spill quicker. The U.S. EPA also believes that working with people at the local and state level will build relationships in order to have an effective response.

The U.S. EPA on-scene coordinator has authority to direct the response to oil and hazardous substance releases. Although the U.S. EPA has the authority to direct the responders, the agency's primary role is to monitor conditions and support state and local agencies. The U.S. EPA recognizes that emergency response begins at the local level. With state assistance, the response at the local level is usually all that is necessary other than the U.S. EPA just being notified. When incidents escalate, as with the Martin County Coal slurry spill, the U.S. EPA will exercise authority at the scene.

Mr. Smith said the Martin County Coal Company's response to the slurry spill was effective but not necessarily efficient. The magnitude of the spill and the number of agencies involved all contributed to the difficulty in managing it. This is not unusual--working together at an incident of this size. Unless the agencies have the ability in advance to work together, plan together, and train together so that everyone can understand what each other's authority and jurisdiction and interest in the matter are, then as the incident grows larger, the actual response can suffer in the process.

Mr. Smith outlined some constructive solutions that came from the Martin County Coal Slurry spill:

- The U.S. EPA is engaged with the Kentucky Department of Environmental Protection for establishment of a Memorandum of Agreement (MOA) as to the roles and relationships and commitments in the area of spill response. The MOA will go into detail about (1) how each agency responds to a spill; (2) what each agency's authorities are; (3) opportunities (particularly in the area of oil discharges) for the state to access federal resources--how that can happen and how the U.S. EPA will assist. At this time that document is still in the review stage.
- The U.S. EPA plans to be involved in particular in a contingency planning for a response to a major spill along the Ohio River. If a major spill were to occur, and if it is a transportation incident, the U.S. EPA has negotiated an agreement with the Coast Guard that their Captain of Port would be the federal on-scene coordinator in charge of the incident and the U.S. EPA would support them. If the spill were not a transportation-related spill or a commercial barge, the U.S. EPA would exercise authority to direct the response to the spill. The U.S. EPA wants to be better prepared to handle such an incident. If a spill were to occur today, the response would be effective but would not be as efficient as could be if we spent some time planning and training with each other. Some companies, as well as the Coast Guard and fire services at the local level, are now establishing an Incident Command System and organizing to use an Incident Command System to respond to a spill. This system is new to a lot of folks at the state and federal level. For a large spill, the structure of this response system as a management tool is the only thing that will save you and allow all the participants to work together and understand how to tackle a big spill. We (the state and federal level's of government) need to be more effectively trained in incident command systems so we will all be speaking the same language in a crisis situation.

Questions and answers followed Mr. Smith's presentation.

Question. Do you foresee the slurry pond method to be discontinued for better methods of spill prevention?

Response. The U.S. EPA does not regulate slurry ponds directly and this is a question for the Mine, Safety, Health and Administration or the Department of Surface Mining Reclamation and Enforcement.

Question. Does the Corps of Engineers have a role?

Response. The Martin County Coal slurry spill raised the need for the U.S. EPA to look at whether there are ways to better regulate coal impoundments.

Question. Can you tell us more about the cleanup plans and consent decree with Martin County Coal?

Response. The consent order was signed in March 2001 with the U.S. EPA and Martin County Coal to formalize the relationship where the U.S. EPA would require Martin County Coal to do additional work and further investigation of restoration for the areas that were damaged by the slurry spill. The consent decree requires the company to submit plans that detail how they will go about that process. At the present time, they have submitted an initial plan. The U.S. EPA has submitted their comments and collected comments from various other state and federal agencies on the plans, sent them to Martin County Coal asking them to make improvements and submit a revised plan. The next step would be for the plans to be approved and whatever additional work is agreed to and required by U.S. EPA.

Question. Was there citizen input into those plans?

Response. I don't know.

Question. Are you aware if the U.S. EPA is considering appointing an oversight committee of federal and state officials or public advisory committee that will monitor the implementation of this restoration plan?

Response. By virtue of the order, the U.S. EPA has an oversight responsibility at the federal level to be sure the plan is implemented. The community has been encouraged to establish a board that would be able to get information and have a spokesperson to be able to attend meetings and communicate the communities' perspective on things.

Question. Is the cleanup considered to be completed at this time?

Response. No. The company collects information to allow federal and state agencies to make the decision as to what level of additional cleanup will be necessary.

Question. Does the U.S. EPA seek cost reimbursement?

Response. Yes, part of the EPA's agreement with Martin County Coal is that they will reimburse us for past and future costs of over-seeing the project.

Question. Do you have a dollar figure?

Response. As of about three months ago, Martin County Coal had spent about \$35 million on the project. As of December 2000, EPA's costs were \$1 million.

Question. A person from the audience commented about the response timeline of the Martin County Coal Slurry spill. He stated that the most critical part of the spill was notifying the citizens in the area. Notification to citizens was ineffective. Most citizens did not know about the spill until the next morning. The emergency response team arrived and could have gone door-to-door notifying people. No one informed citizens. Shouldn't someone be looking at how, in the future, to get immediate notification to citizens?

Response. Yes. This needs to be planned for and executed at the local level. A state or federal agency can not perform that function because local level is notified first. That may need to be spelled out in the company's contingency plan and reviewed and discussed with the community and inform them of how things need to take place.

Question. Should all coal companies have a plan to notify citizens that live below slurry ponds?

Response. Yes. This was a wake up call.

The Chair stated that the state and U.S. EPA need to take the Martin County Coal slurry spill as a warning. People look to the U.S. EPA as a protector and the agency needs to take the initiative to help protect the citizens.

Other comments -- A comment was made by a gentleman in charge of emergency planning for the Louisville Water Company. He stated that the Louisville Water Company serves some 700,000 people and it is very important to him how the initial notification of a spill or disaster is going to come to the Water Company. Communication is very important.

The Chair stated that EQC is going to review these comments and will make a recommendation at its next meeting.

Division of Water -- Confined Animal Feeding Operations/Animal Feeding Operation Regulation

The Chair next recognized Bruce Scott with the Division of Water. Mr. Scott gave a brief summary of the CAFO/AFO regulation KRS 224.01-100 through 224.01 – 115, and 401 KAR 5:074.

Questions and Answers followed Mr. Scott's presentation.

Question. Do these regulations basically focus on setbacks regulating the location of animal feeding operations?

Response. Section 1 indicates that it is applicable under the KPDES program; Section 2 concerns co-permitting--the integrator liability of the operator/contract grower/ company and the relationship of responsibility; and Section 3 deals with Best Management Plans and setbacks and litter storage. Regulation is primarily a water protection regulation.

After discussion, a motion to approve 401 KAR 5:074 KPDES permit conditions for beef, dairy, poultry and swine concentrated animal feeding operations regulation was made by Betsy Bennett and seconded by Serena Williams. The motion passed unanimously and the regulation was approved.

Other Business

Executive Director Leslie Cole suggested that a letter be sent to the U.S. EPA concerning the restoration plan from Martin County Coal. Patty Wallace made a motion that EQC send a letter to the U.S. EPA to

- provide additional opportunities for public comment and input on the proposed restoration plan;
- appoint an oversight board composed of both federal and state officials to monitor the implementation of the restoration plan and activities; and
- create a public advisory committee to advise the oversight board on issues of public concern and provide a forum for public input.

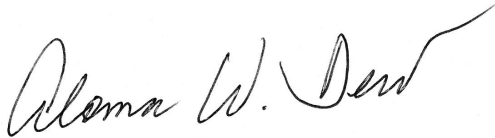
The motion was seconded by Betsy Bennett and passed unanimously.

The EQC budget was in good shape. EQC has not officially heard about the possible budget cuts but it looks like it could be a 3.5 percent budget cut.

The State of Kentucky's Environment Report news articles were provided for the convenience of the Commissioners.

The meeting for August 23 concerning Growth & Development issues was postponed until September 25.

There being no further business, the meeting adjourned at 4:00 p.m.



Signed

September 26, 2001

Date